

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of: MARSHALL DITCH</p> <p>Ralph Perkins 10190 North US HWY 89 Panguitch, UT 84759</p> <p>David E. Sorensen 30582 Hunt Club Dr. San Juan Capo, CA 92675</p> <p>S.D. Marsh PO BOX 138 Escalante, UT 84726</p> <p>RESPONDENTS</p>	<p style="text-align: center;">CONTROL STRUCTURE AND MEASURING DEVICE NOTICE</p> <p style="text-align: center;">SEAA No. 1402</p> <p style="text-align: center;">DISTRIBUTION ACCOUNTS: 102219, 102218, 102175</p> <p style="text-align: center;">WATER RIGHTS: 61-2021, 61-2043</p>
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I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

(1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, except as provided by Subsection (4), shall construct or install and maintain controlling works and a measuring device at:

(a) each location where water is diverted from a source; and

(b) any other location required by the state engineer.

(2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.

(3) The state engineer shall approve the design of:

(b) controlling works so that the state engineer or a water commissioner may regulate and lock the works.

(4) A person using water as an instream flow:

(b) is not required to install controlling works unless the state engineer's order approving the application requires the installation because controlling works are necessary to achieve the purpose of the application.

(6) If a water user refuses or neglects to construct or install the controlling works after 30 days' notice to do so by the state engineer, the state engineer may:

(a) forbid the use of water until the user complies with the state engineer's requirement; and

(b) commence enforcement proceedings authorized by Section 73-2-25.

II. STATEMENT OF FACTS

1. The Respondents are the users of water rights 61-2021 and 61-2043.
2. Water under these rights is distributed through a headgate diversion on the South Fork of the Sevier River into the Marshall Ditch at a point in the SW¼ of Section 35, T32S, R5W, SLB&M.
3. Distribution Commissioner, Ray Owens, has affirmed that the headgate at this diversion is inoperable.
4. Distribution Commissioner, Ray Owens, has affirmed that the Parshall flume measuring this diversion is filled with sediment and not measuring accurately.
5. In order for the Commissioner to properly deliver water to the Respondents, the head gate must be either replaced or repaired.
6. In order for the Commissioner to properly measure the water delivered to the Respondents, the ditch up and down stream of the Parshall flume must be cleaned and the flume must be cleared of vegetation and sediment.

III. ACTIONS REQUIRED

1. The Respondents are hereby notified that **the Marshall Ditch head gate must be repaired or replaced in a manner that will provide the Commissioner an ability to fully control the diversion of water and to securely lock the headgate in place.**
2. The area surrounding the head gate must be sufficiently clear of vegetation to allow reasonable access by the Commissioner.
3. The Respondents are hereby notified that **the Marshall Ditch up and down stream of the Parshall flume must be cleaned and the flume must be cleared of vegetation and sediment.**
4. The area surrounding the Parshall flume must be sufficiently clear of vegetation to allow reasonable access by the Commissioner.
5. The Respondent's facilities are to be perpetually maintained in good working order as described above.

6. Prior to commencing the required work and during the construction and repairs, the Respondents are advised to consult with the Commissioner to assure that the planned improvements will satisfy the requirements of this Notice.
7. **The required work must be completed and the Commissioner notified of said completion prior to the 2011 irrigation season, being no later than March 15, 2011.**

IV. ADDITIONAL AGENCY ACTION

1. The Respondents are encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondents have complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. If an Order forbidding the use of water is issued and is violated by the Respondents, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation an Order, the Respondents may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondents may be liable for expenses incurred by the Division in investigating and stopping the violation.”

Equitable distribution of water from the Sevier River is a concern to the Division as I am sure it is to the Respondents. We appreciate and thank you for your cooperation in this matter. Should you have any questions about this Notice, please contact Sue Odekirk at (801) 538-7431 or Kirk Forbush, Southern Regional Engineer at (435) 896-4429.

Dated this 25th day of August, 2010.

Sue Odekirk

Sue Odekirk, P.E.

Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 25th day of August, 2010, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

Ralph Perkins
10190 North US HWY 89
Panguitch, UT 84759

David E. Sorensen
30582 Hunt Club Dr.
San Juan Capo, CA 92675

S.D. Marsh
PO BOX 138
Escalante, UT 84726

Kelly Horne
Kelly Horne
Division of Water Rights
Field Services Secretary

U.S. Postal Service™ Delivery Confirmation	U.S. Postal Service™ Delivery Confirmation	U.S. Postal Service™ Delivery Confirmation Receipt
<p>DELIVERY CONFIRMATION NUMBER: 0308 2040 0001 6219 9476</p> <p>Postage and Delivery Confirmation fees must be paid before mailing.</p> <p>Article Sent To: (to be completed by mailer)</p> <p>(Please Print Clearly)</p> <p>S.D. Marsh</p> <p>8/25/10</p> <p>Postmark Here</p> <p>PS Form 152, May 2002</p>	<p>DELIVERY CONFIRMATION NUMBER: 0308 2040 0001 6219 9476</p> <p>Postage and Delivery Confirmation fees must be paid before mailing.</p> <p>Article Sent To: (to be completed by mailer)</p> <p>(Please Print Clearly)</p> <p>Ralph Perkins</p> <p>8/25/10</p> <p>Postmark Here</p> <p>PS Form 152, May 2002</p>	<p>DELIVERY CONFIRMATION NUMBER: 0308 2040 0001 6219 9452</p> <p>Postage and Delivery Confirmation fees must be paid before mailing.</p> <p>Article Sent To: (to be completed by mailer)</p> <p>(Please Print Clearly)</p> <p>David Sorensen</p> <p>8/25/10</p> <p>Postmark Here</p> <p>POSTAL CUSTOMER: Keep this receipt. For inquiries: Access internet web site at www.usps.com® or call 1-800-222-1811</p> <p>CHECK ONE (POSTAL USE ONLY)</p> <p><input type="checkbox"/> Priority Mail™ Service</p> <p><input type="checkbox"/> First-Class Mail® parcel</p> <p><input type="checkbox"/> Package Services parcel</p> <p>(See Reverse)</p> <p>PS Form 152, May 2002</p>

CC: Kirk Forbush, Ivan Cowley, Ray Owens